

TITLE 10. CALIFORNIA DEPARTMENT OF INSURANCE

NOTICE OF PROPOSED RULEMAKING ACTION

PUBLIC PROCEEDINGS: Notice is hereby given that the California Department of Insurance will conduct written proceedings, during which time any interested person or such persons duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice. Any written statements, arguments or contentions must be received by the California Department of Insurance, Fraud Division, Legal Counsel, 9342 Tech Center Drive, Suite 100, Sacramento, CA 95826, by 5 p.m. on December 15, 2000, which is hereby designated as the close of the written comment period. It is requested but not required that written statements, arguments or contentions sent by mail or hand delivered be submitted in triplicate. A public hearing regarding the proposed rulemaking has been set for December 15, 2000 at 10:00 a.m. at 9342 Tech Center Drive, Suite 100, Sacramento, CA 95826.

Comments by FAX (916-255-3344) or email (kennedw@insurance.ca.gov) must be received before 5:00 p.m. on the last day of the public comment period. All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes in the regulation text of which additional comments may be solicited.

CONTACT: Inquiries concerning the action described in this notice may be directed to Wesley E. Kennedy, Staff Counsel, at (916) 854-5760. In any such inquiries, please identify the action by using the Department of Insurance regulation control number: RH-394

INFORMATIVE DIGEST

Statement of Specific Purpose

The Insurance Commissioner of the State of California (Commissioner) proposes to amend Subchapter 10, Article 4, Sections 2698.61, 2698.62, 2698.65, 2698.66 and 2698.67 title 10, Chapter 5 of the California Code of Regulations (CCR) regarding the program for investigation and prosecution of automobile insurance fraud. The purpose of the proposed amendment is to implement, interpret and make specific the provisions of the California Insurance Code (CIC) sections 1872.8 which requires the Commissioner to assess and distribute certain funds to California district attorneys for the purpose of prosecuting automobile insurance fraud cases.

AB 1050, Chapter 885, Statutes of 1999, was signed by the Governor on October 9, 1999 creating the Organized Crime Prevention and Victim Protection Act of 1999 (the Act). AB 1050, inter alia, added CIC 1874.8 and 1874.81 as well modifying existing CIC section

1872.8. In adopting AB 1050, the Legislature added to the existing statutory provisions a requirement that the Commissioner conduct a fiscal audit of the grant programs operated by the district attorneys at least once every three years.

The Commissioner has adopted emergency regulations to implement the Organized Automobile Insurance Fraud Interdiction Program as part of the under the Organized Crime Prevention and Victims Protection Act of 1999. This program was established pursuant to CIC section 1874.8 and 1874.81 and is set forth in the regulation at title 10, California Code of Regulations, Sections 2698.70 through 2698.77. That program establishes a similar process for funding the investigation and prosecution of organized insurance fraud activity through a limited number of grant awards, auto insurance fraud program grant program authorizes the Commissioner to distribute funding to counties through a grant process to fund the prosecution of auto insurance fraud by district attorneys. Those regulation provide, inter alia, for an assessment for a similar assessment in the amount of fifty-cents (\$.50).

In addition to adding provisions establishing a uniform auditing process, the regulations proposed in these amendments are intended to conform the existing assessment process to that established for the Organized Automobile Insurance Fraud Interdiction Program and thereby provide a uniform make conforming amendments and improved assessment process.

CIC section 12921 requires the Commissioner to enforce the provisions of the Insurance Code and other laws regulating the business of insurance in the State of California. CIC section 1872.8, requires the Commissioner to establish an annual assessment on each vehicle for which a policy of insurance has been issued in this state in order to fund the activities under the Act by the Commissioner and county district attorney offices.

The proposed amendment of these new provisions is necessary to implement, interpret and make specific the provisions of CIC section 1872.8. The proposed action would specify the procedure for undertaking the assessment, the procedure by which district attorneys may apply for grant funding, and the standards for reporting and auditing the grantees use of grant funds and performance under the grant program.

There are no other existing, comparable federal regulation or statutes.

Summary of Proposed Provisions

The effect of the specific regulations is as follows:

Section 2698.61 Definitions

This section would amend existing, add new definitions, and define the terms utilized in these new provisions.

Section 2698.62 Annual Fee

This section would delete the existing section and replace it with a new section which maintains the current level of the assessment paid per insured vehicle at one-dollar (\$1.00) and make specific the calculation of the assessment as well as provide for a period after which payment of the assessment would be delinquent and a sanction for such delinquency.

Section 2698.65 Application Procedure

The amendment to this subsection makes deletions to the existing text to remove outdated references and to conform certain text to make uniform and clear the nomenclature and in one instance make more specific a provision relating to the types of activity that need be reported.

Section 2698.66 Budget Proposal

This section amends the existing procedure for the preparation and contents of a proposed budget setting forth in line item detail estimates of the applicants program cost. The proposed amendments in this section is section further clarify the general guidelines for allowable and non-allowable costs that may be included in the proposed budget as well as providing a mandatory uniform definition of indirect costs. This section further describes a process for budget modifications.

Section 2698.67 Grant Reporting and Audit

This section proposes amendments the requirement that each applicant submit an annual report reflecting the fiscal and program activity of the grant award and the timing of the submission of such reports. Subsection (c) proposes an amendment that provides a uniform standard for the reporting and auditing of program fiscal activity. Finally, subsection (h) adds a requirement that the grantees cooperate with the Commissioner in the undertaking of any audits and provides sanction for a grantee's refusal to cooperate.

MATERIAL INCORPORATED BY REFERENCE

Government Accounting Standards Revised (July 1999) published by the Comptroller General of the United States, General Accounting Office. This document is maintained and can be viewed on the Internet at <http://www.gao.gov>. Once at the homepage for the Government Accounting Office further reference should be made through "other publications" to "complete listing" and then "Government Auditing Standards."

DETERMINATIONS

EFFECT ON SMALL BUSINESSES

The proposed regulation will not have an effect on small businesses because the assessment proposed is directed solely to insurers. (Gov. Code § 11342(h)(2)(B).)

IMPACT ON BUSINESSES AND JOBS

The Commissioner of the California Department of Insurance has determined that the regulations would not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with the businesses on other states.

The California Department of Insurance has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently within the State of California.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Insurance Commissioner must determine the potential impact of the proposed action on private persons or businesses directly affected by the proposal. The proposed regulations are not expected to have significant cost impact on private persons or businesses directly affected. The proposed amendments do not impose a new cost on businesses directly affected. Existing regulation and statute impose a one-dollar (\$1.00) per policy per vehicle per year assessment along with the associated with the calculation and transmittal of this assessment.

IMPACT ON HOUSING

The matters proposed herein will not affect housing costs.

COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The California Department of Insurance has determined that there will be no cost savings or increase, nor will these regulations impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(12) the Department must determine that no alternative considered by the California Department of Insurance would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affected private persons than the emergency action. These regulations are to implement, interpret and make specific a statutorily prescribed program. No alternatives were considered.

FEDERAL FUNDING

The matters proposed herein will not affect federal funding to the state.

NON-DISCRETIONARY COST OR SAVING

The matters proposed will not impose any non-discretionary cost or savings to local agencies.

COSTS AND SAVINGS TO STATE AGENCIES

The matters proposed herein will not result in any cost or savings to state agencies.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

ACCESS TO HEARING ROOMS

The facilities used for any public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below in order to make special arrangements, if necessary).

REPRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

All persons are invited to submit written comments to the Insurance Commissioner prior to the public hearing on the proposed regulations. Written comments transmitted via facsimile machine will not be accepted. Comments should be sent to the agency contact person:

Department of Insurance
Fraud Division
Attn: Wesley E. Kennedy
9342 Tech Center Drive, Suite 100
Sacramento, CA 95826

All interested persons may present oral/or written testimony at the scheduled public hearing.

ACCESS TO COPIES OF PROPOSED REGULATION AND STATEMENT OF REASONS

The California Department of Insurance has prepared and has available for public review the proposed text and an initial statement of reasons for the emergency regulations and any supplemental information contained in the rulemaking file. Requests for copies of the initial statement of reasons and the text of the proposed regulation should be directed to the agency contact person named above. Upon prior request, the rulemaking file is available for inspection at 9342 Tech Center Drive, Suite 100, Sacramento, California, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, holidays excepted.

ADOPTION OF REGULATION

Following the close of the comment period and any hearing, the Insurance Commission may adopt the regulation substantially as described in this notice and informative digest. Copies of the regulations, as adopted, will be sent to all persons on the Commissioner's interested parties mailing list and to all person who provided comment during the comment period or at any public hearing, and those persons who have requested copies of information regarding the regulations.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations as proposed would not mandate the use of specific technologies or equipment.

ADDITIONAL STATEMENTS AND COMMENTS

As a result of public comment (oral or written) the Insurance Commissioner may determine that changes to the proposed regulations are appropriate. If those changes are sufficiently related to the original text the public was originally noticed of in the proposed regulatory action, copies of the revised proposed regulations will be sent to all persons who testified at the public hearing or submitted comments during the comment period or at the public hearing, and those persons who have requested copies of information regarding the regulation. The full text of the changed regulations will be available for at least 15 days prior to the date on which the agency adopts, amends or repeals the resulting regulations,

At least 45 days notice will be given if the changes are not sufficiently related to the original text that the public was not adequately placed on notice that the changed action could result from the originally proposed action.

If adopted these regulations will appear in Title 10, Chapter 5, Subchapter 9, Article 4, Sections 2698.61, 2698.62, 2698.65, 2698.66 and 2698.67, California Code of Regulations